

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Dennis D. Linehan,

Case No. 18-cv-3483 (WMW/KMM)

Plaintiff,

**ORDER REJECTING REPORT AND
RECOMMENDATION**

v.

Nancy Johnston et al.,

Defendants.

This matter is before the Court on the February 20, 2019 Report and Recommendation (R&R) of United States Magistrate Judge Katherine M. Menendez. (Dkt. 7.) The R&R recommends dismissing this action without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b). In light of Plaintiff Dennis D. Linehan's recent filings, the R&R is rejected and the matter is remanded to the magistrate judge for further consideration.

BACKGROUND

Linehan filed a complaint and an application to proceed *in forma pauperis* (IFP) on December 27, 2018. On January 24, 2019, the magistrate judge ordered Linehan to supplement his IFP application within 20 days. After that deadline passed with no response from Linehan, the magistrate judge issued the pending R&R, which recommends dismissing the action without prejudice for failure to prosecute.

Linehan subsequently filed a letter with the Court dated February 27, 2019, and he filed supplemental materials on March 6, 2019. In the February 27, 2019 letter, Linehan

represents to the Court that he had been unaware of the magistrate judge's January 24, 2019 Order. Linehan also includes financial information to supplement his IFP application. The Court now considers the pending R&R in combination with Linehan's recent filings.

ANALYSIS

When a magistrate judge submits a recommendation for disposition, the district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Supreme Court of the United States has explained, however, that Section 636(b)(1) "does not preclude further review by the district judge, *sua sponte* or at the request of a party, under a *de novo* or any other standard." *Thomas v. Arn*, 474 U.S. 140, 154 (1985) (observing that "[t]he district judge has jurisdiction over the case at all times" and "retains full authority to decide whether to refer a case to the magistrate, to review the magistrate's report, and to enter judgment"). Accordingly, this Court reviews the magistrate judge's R&R *de novo*.

District courts in this circuit have rejected R&Rs that recommend dismissing a case for failure to prosecute when there is subsequent filing activity. *See, e.g., Moraine v. Soc. Sec. Admin.*, 2009 WL 2729891, at *1 (D. Minn. Aug. 25, 2009). In *Moraine*, a pro se plaintiff failed to file a motion pursuant to a court-ordered schedule. *Id.* After the magistrate judge issued an R&R that recommended dismissal for failure to prosecute, the plaintiff submitted the overdue motion. *Id.* Emphasizing the plaintiff's pro se status, the court held that it was appropriate to reject the R&R and remand the matter to the magistrate judge for consideration on the merits. *Id.*; *see also Cater v. Linden*, 2018 WL 5309837,

at *1 (D. Minn. Aug. 20, 2018) (declining to adopt an R&R recommending dismissal for failure to prosecute when the pro se plaintiff subsequently submitted the overdue item).

As in *Moraine*, Linehan is a pro se plaintiff who failed to timely submit materials as ordered by the Court. Because Linehan has since submitted information that is responsive to the Court's January 24, 2019 Order, it is appropriate to reject the R&R's recommendation to dismiss this case for failure to prosecute. The Court remands the matter to the magistrate judge to consider Linehan's pending motions on the merits.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. The February 20, 2019 R&R, (Dkt. 7), is **REJECTED**.
2. The matter is **REMANDED** to United States Magistrate Judge Katherine M. Menendez for consideration on the merits.

Dated: April 5, 2019

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge